



Memorandum

TO: HONORABLE MAYOR AND
COUNCIL

FROM: Harry Freitas

SUBJECT: SEE BELOW

DATE: July 28, 2014

Approved

Date

8/8/14

COUNCIL DISTRICT: 7

**SUBJECT: PUBLIC HEARING ON THE APPEAL OF THE PLANNING DIRECTOR'S
ADOPTION OF THE SUBSEQUENT MITIGATED NEGATIVE
DECLARATION FOR THE STAR CONCRETE EXPANSION PROJECT
(1510 S. 7th STREET), FILE NO. SP13-065.**

RECOMMENDATION

Conduct an Administrative Hearing and consider an Appeal of the Planning Director's adoption of the Subsequent Mitigated Negative Declaration (MND) for the proposed project, The Star Concrete Expansion Project (File No. SP13-065). This Special Use Permit recognizes the Star Concrete facility expansion to include the following: (i) collection and recycling of concrete materials into reusable building materials on the northern portion of the site, (ii) allow short-term noise levels in excess of 70 dBA at the project site property lines due to concrete crushing operations, and (iii) the construction of a compressed natural gas (CNG) fueling station for on-site refueling of project CNG vehicles, all on a 7.93 gross acre site in the HI Heavy Industrial Zoning District located at 1510 S. 7th Street. In addition, consider adoption of a resolution upholding the Planning Director's adoption of the Subsequent MND and related Mitigation Monitoring and Reporting Program (MMRP), and making the required findings under CEQA.

OUTCOME

Denial of the environmental appeal and adoption of the Subsequent MND will allow the applicant to implement the Special Use Permit (File No. SP13-065) to continue concrete recycling operations and install a CNG fueling facility at the subject site. Upholding the environmental appeal would void the approved Special Use Permit and would require the preparation of a new environmental document prior to re-hearing the application for a Special Use Permit.

EXECUTIVE SUMMARY

Star Concrete operates a concrete manufacturing facility with two indoor concrete batch plants and retail sales of building materials under a Conditional Use Permit issued by the City in 1988 (File No. CP88-003). The City adopted a Negative Declaration in approving those operations. In 2007, Star Concrete modified its operation to include a concrete recycling facility without the required City permit. Star Concrete applied for a development permit to bring the concrete recycling facility into conformance with the Zoning Code (which requires a Special Use Permit for Recycling Processing Facilities in the HI zone district), to allow short-term noise levels in excess of 70 dBA at the project site property lines due to concrete crushing operations associated with concrete recycling, and to allow the construction of a CNG fueling station for on-site refueling of CNG vehicles delivering concrete. The City prepared a Subsequent MND, which the Director of Planning adopted as part of approval of the Special Use Permit allowing the requested changes to the previously approved 1988 project. The adoption of the Subsequent MND is the subject of the present appeal.

This report addresses the issues raised in the environmental appeal of the Subsequent MND for the Star Concrete Expansion Special Use Permit. Issues raised in the appeal pertain to: (i) the adequacy of the project description (particularly components of the CNG fueling facility); (ii) the adequacy of the analysis of the cumulative noise, air quality, and traffic effects of the project with surrounding uses; and (iii) the air quality, noise, aesthetics, hazardous materials, and traffic impacts of the project.

This report further documents that the Subsequent MND should be adopted by the City Council as being in compliance with the California Environmental Quality Act (CEQA) and that on the basis of the whole of the administrative record that there is no substantial evidence that the project will have a significant effect on the environment. The project does not include substantial changes to the previously approved project (the 1988 CUP, File No. CP88-003) requiring major revisions to the adopted Negative Declaration for concrete production and the sale of building materials on the southern portion of the project site. The project has no new significant environmental effects or a substantial increase in the severity of any previously identified significant effect. Finally, there is no new information involving significant effects since adoption of the prior Negative Declaration; therefore, an Environmental Impact Report (EIR) is not required pursuant to Section 15162(a) of the CEQA Guidelines.

BACKGROUND

Star Concrete operates a cement batch plant, materials retail operation, and an unpermitted concrete recycling at the subject site. The application analyzed in the subject MND on appeal is for a Special Use Permit to recognize the expansion of the Star Concrete site to include the collection and recycling of concrete materials, to allow short-term noise levels in excess of 70 dBA at the project site property lines from concrete recycling operations, and to allow the

construction of a CNG fueling facility. The following timeline details the previous permits and iterations of the current application to expand Star Concrete's operations:

- July 13, 1988: The Planning Commission approved a Conditional Use Permit (file no. CP88-003) for a concrete batch plant facility at the southern end of the current project site. This permit allowed for the production of ready-mix concrete with two indoor batch plants and retail sales of building materials. A Negative Declaration was adopted by the City, with no significant impacts identified.
- January 23, 2007: The applicant applied for a Special Use Permit (File No. SP07-005) to expand Star Concrete's operations to include concrete recycling at the northern end of the current project site and to install a third batch plant to supplement the previously approved concrete batch plant operations. Subsequent to the filing of this application, Star Concrete initiated concrete recycling operations and associated stockpiling on the northern parcel without the benefit of a permit.
- November 17, 2010: A Lot Line Adjustment (file no. AT10-023) was approved to combine Star Concrete's two properties into a single legal lot (current project site), encompassing 7.9 acres (APN 477-09-046).
- April 10, 2012: The City converted application SP07-005 to a Conditional Use Permit (File No. CP12-014) in response to noise studies that found the concrete recycling operations exceeded noise limits specified in the Zoning Ordinance (Performance Standards for Industrial Uses, Table 20-135 of Section 20.50.300).
- October 23, 2013: Application is converted back to a Special Use Permit (file SP13-065) in accordance with changes to the Zoning Ordinance approved by City Council on October 1, 2013, which reduced requirements for industrial-zoned properties that exceed noise limits in the Zoning Code to a Special Use Permit instead of a Conditional Use Permit (Ordinance 29312).
- March 2014: The applicant decides to remove the proposed third batch plant from the project description. The updated Special Use Permit project scope only reflects the concrete recycling operations, short-term noise levels in excess of Zoning Ordinance standards, and the CNG fueling station.
- June 17, 2014: After the noticed public hearing, the Planning Director adopted a Subsequent MND and approved Special Use Permit SP13-065.

Environmental Review

The original 1988 approval for the existing concrete batch plant operations and sale of building materials was based on a Negative Declaration adopted concurrently with the permit approval. The subsequent environmental review for the project modifications started with the receipt of the 2007 Special Use Permit application (File No. SP07-005). The project over time has included the preparation of three Initial Studies and draft Mitigated Negative Declarations, two of which were publically circulated for comments (the 1st and 2nd IS/MNDs). The third Initial Study and Mitigated Negative Declaration (Subsequent IS/MND) was a revision to the 2nd IS/MND in response public comments and a modification of the project to remove a proposed third concrete batch plant from the project description. The 1st IS/MND was never adopted and was replaced by the 2nd IS/MND circulated in fall 2013. Background on these Initial Studies and public responses are included below:

1st Initial Study and Mitigated Negative Declaration – Circulated Summer 2012

Under file CP12-014, the 1st IS/MND was prepared and circulated between June 1st, 2012 and July 2nd, 2012 (including a ten-day extension of the public review period from June 21 to July 2). The 1st IS/MND analyzed both the concrete recycling operations and the installation of a third batch plant for the production of recycling concrete, but did not include a CNG fueling facility. Eight comment letters were received, including letters from San Jose State University, the Spartan-Keyes Neighborhood Action Coalition, and Sharon Seidenstein, an attorney representing a coalition of neighbors and workers. Issues raised in these letters included air quality (especially fugitive dust impacts to Spartan Stadium and surrounding properties), traffic on 7th Street, aesthetics, and the need for an EIR). The 1st IS/MND was never adopted as additional information and analysis was required to respond to the issues raised in these comment letters. Subsequently, the City converted the project back to a Special Use Permit based on revisions to the Zoning Ordinance.

2nd Initial Study and Mitigated Negative Declaration – Circulated Fall 2013

Under SP13-065, the 2nd IS/MND was prepared in response to the comments received on the 1st IS/MND to reflect the addition of a CNG fueling station to the project description. The City circulated the 2nd IS/MND between November 8, 2013 and January 2, 2014, which included an extension of the public review period in response to requests from members of the public. Ten comments were received, including comments from individual neighbors, the Spartan-Keyes Neighborhood Action Coalition, and Emily Rich, an attorney representing a coalition of neighbors and workers. Issues raised in these letters were substantially the same as those submitted in the comment letters on the 1st IS/MND.

Revised Initial Study and Subsequent Mitigated Negative Declaration

Since the end of the public circulation period for the 2nd IS/MND, the applicant changed the scope of the project to remove the third batch plant from the project description and to include

the re-paving of the northern portion of the site to satisfy Storm Water Pollution Prevention Plan requirements. Without an expansion of the batch plant operations, concrete production capacity remains the same as that permitted under CP88-0003 and Negative Declaration. The re-paving will mainly replace deteriorated paving and will only result in a small (3,500 square feet) increase in impervious surface.

On June 6, 2014, a Supplemental Memo was posted to the Planning Department's Internet site (Supplemental Memo). The memo responded to comments received on the 2nd IS/MND and included a revised Initial Study and Subsequent Mitigated Negative Declaration (Subsequent IS/MND) reflecting changes to the project description and additional clarification in response to issues raised in the comment letters. Pursuant to Section 15073.5 of the CEQA Guidelines, recirculation of the Subsequent IS/MND is not required because the changes and clarifications made to the document are not substantial revisions, as no new significant effects have been identified. The primary change to the project description is the removal of the proposed third batch plant, which would result in the project having less environmental impacts than the project described in the 2nd IS/MND.

Adoption of the Revised Initial Study and Subsequent Mitigated Negative Declaration

At the Planning Director's Hearing on June 18, 2014, Michael Burstein, an attorney representing a coalition of neighbors and workers, submitted a comment letter in response to the June 6th Supplemental Memo. This letter re-iterated the conclusion of the previous letter submitted by the coalition on the 2nd IS/MND that the analysis in the Subsequent IS/MND is inadequate and that an EIR should be prepared.

Appeal of Environmental Determination

A timely appeal of the Planning Director's adoption of the Subsequent IS/MND was filed on June 23, 2014 by Michael Burstein on behalf of Aurelia Sanchez, Kelli Watson, Dianna Martin, Teamsters Local 287, and the Santa Clara and San Benito Counties Building & Construction Trades Council. Per Section 21.04.140 of Title 21 of the San Jose Municipal Code, an appeal of an environmental clearance determination must be heard by the City Council.

Upon conclusion of the environmental appeal hearing, the City Council may find that the Subsequent IS/MND has been completed in compliance with the requirements of CEQA, that on the basis of the whole record there is no substantial evidence that the project with mitigation will have a significant effect on the environment, and that the Subsequent IS/MND reflects the City's independent judgment and analysis. If the Council makes such a finding and certification, it shall uphold the Planning Director's adoption of the Subsequent IS/MND.

If the City Council finds that the project may have a significant effect on the environment, the City Council shall require the preparation of an Environmental Impact Report (EIR) prior to any consideration of whether the project should be approved. The approval of the Special Use

Permit by the Planning Director will be nullified, and a new decision made after the EIR is prepared and certified by the City Council.

ANALYSIS

The analysis below summarizes the alleged deficiencies with the environmental document asserted by the appellants and provides City staff's responses demonstrating that the Subsequent IS/MND satisfies the requirements of CEQA.

- 1. Allegation: The Project Proposes to Authorize a CNG Dryer, Which Can Produce Hazardous Chemicals, but the MND Fails to Address the Dryer and Therefore the Project Cannot be Approved.*

The appellants claim that the project description in the Subsequent IS/MND is inadequate because it does not describe the gas dryer to be installed as a component of the CNG fueling system and does not address hazardous waste byproducts (specifically polychlorinated biphenyls (PCBs) and benzene) that "some CNG dryers" produce. The appellants, however, provided no evidence that the CNG dryer to be installed at the Star Concrete site will produce toxic by-products.

In the June 6th, 2014 Supplemental Memo, staff detailed the components of the CNG fueling system and highlighted the permit condition of approval included in the Special Use Permit that a Hazardous Materials Management Permit (HMMP) must be obtained from the San Jose Fire Department, Fire Prevention Bureau prior to installation. The HMMP ensures that installation and operation of the CNG facility will not pose a safety hazard. In addition, the applicant submitted a letter dated July 10, 2014 from William J. Kelly, Jr., an attorney representing PSB Industries, Inc., the manufacturer of CNG fueling station dryer system that Star Concrete proposes to install (Attachment 7). This letter identifies the type of CNG dryer that Star Concrete proposes to use and describes the dryer's operation, detailing how the system is designed to contain the resulting liquid condensate, along with any hazardous byproducts in the natural gas, in a self-contained vessel for later disposal. Once contained, any hazardous byproducts will be subject to disposal per the requirements of the HMMP and the County of Santa Clara's Hazardous Materials Compliance Division (HMCD).

The requirements for the installation of the CNG facility and the HMMP for the handling and disposal of hazardous wastes are governed by State Law and the California Fire Code, and, like building code requirements, are not discretionary. Details of handling and disposal will be addressed as part of the HMMP and the County of Santa Clara HMCD's review process. Compliance with building code, fire code, HMMP, and HMCD requirements will reduce potential hazards from installation and operation of the CNG fueling facility to a less than significant level.

With regards to toxic air contaminants (TACs) from CNG operations, a supplemental letter from James A. Reyff of Illingworth and Rodkin, Inc., the air quality consultant for the project, dated July 17, 2014 (Attachment 8), states: "The natural gas fueling station, including the NGV Fuel Gas Dryer, would be a closed system that would not result in any emissions of air pollutants or TACs. There are no BAAQMD regulations or standards that apply to these facilities." Mr. Reyff goes on to explain the benefits to air quality resulting from the installation of the CNG fueling facility: "Star Concrete's current truck fleet operates on diesel fuel. A benefit of this CNG fueling system is that it would fuel Star Concrete trucks that would replace diesel-powered trucks. The emissions of smog forming air pollutants (i.e., ROG and NOx) and greenhouse gases (GHGs) would be less. At the local level, CNG-fueled trucks would result in no diesel particulate matter emissions (a TAC) and very low particulate matter emissions due to the clean nature of natural gas. Diesel particulate matter is the primary TAC of concern associated with truck traffic in the Bay Area."

2. Allegation: The MND is Inadequate Because It Only Examines the Impacts of the Project in Isolation and Ignores the Cumulative Effects the Project May Have on the Environment.

The appeal letter claims the Subsequent IS/MND is inadequate because it does not analyze the cumulative impacts of the project with other projects in the area that may have similar impacts, especially with regard to air quality, noise, and traffic. Section 15064(h)(1) of the CEQA Guidelines addresses cases when potentially cumulative impacts of a project require the preparation of an EIR:

"An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable.

'Cumulatively considerable' means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."

However, per Section 15064(h)(4) of the CEQA Guidelines further states:

"The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable."

There is no substantial evidence, and none has been submitted by the appellants, to indicate that the project, with the implementation of mitigation measures (for noise and fugitive dust) and standard project permit conditions, will contribute to any significant cumulative environmental impact resulting from existing industrial operations or anticipated future projects in the vicinity of the project site. The appellants also appears to be confusing cumulative analysis (existing conditions, the project, plus foreseeable future projects) with baseline conditions (existing conditions without the project), because comments are primarily focused on an analysis of project impacts in combination with existing conditions.

There are no major projects (projects involving an intensification of land use) proposed in the vicinity of the project except for the Sun Garden Retail Center on Monterey Road (which is currently under construction) and the relocation of Valley Recycling to 1611 S. 7th Street from an adjacent site. An application for the proposed expansion of the Sharks Ice facility at 1500 S. 10th Street has been withdrawn. Due to its distance from the project site and orientation to Monterey Road, the Sun Garden Retail Center will not have any effects on the project site or nearby neighborhoods. The environmental analysis for the Valley Recycling relocation found no significant air quality, noise, or traffic impacts.

The appellant's claims are primarily concerned with an analysis of the project's contribution to existing baseline conditions, not cumulative impacts. As discussed below and in the following topics, the Subsequent IS/MND did consider the impacts of the project in relation to baseline conditions, including the project's contribution to noise, air quality, and traffic.

Project and Ambient Noise Environment

The appellant's allegation focuses in particular on noise impacts from the concrete crushing operations in combination with surrounding activities.

The Noise Reports prepared for the project included background noise when assessing potential project impacts. Jeffrey K. Pack of Edward L. Pack Associates, Inc., the project noise consultants, prepared a supplemental letter dated July 7, 2014 (Attachment 6), which summarizes the background noise environment and the increase in noise resulting from the project. This letter confirmed ambient noise levels at the most impacted property line along Alma Avenue without the concrete recycling facility (the background noise environment, or baseline), ambient noise levels with concrete recycling but without a noise barrier, and ambient noise levels with concrete recycling and a 20 foot tall noise barrier along Alma Avenue.

The letter restates the conclusion of the noise study from December 19, 2012 (Appendix D of the 2nd IS/MND), confirming that the noise exposure on the Alma Avenue side of the 20 foot tall noise barrier is already above the 55 dBA DNL threshold in the General Plan and that the project, with the noise barrier, will increase ambient noise levels by only 2 dB DNL. As stated in the study, "the noise exposure will be approximately equivalent to the existing noise exposures generated by traffic on East Alma Avenue." Furthermore, as discussed in the Subsequent IS/MND, potential noise impacts are further reduced because the crushing and screening operations are conducted entirely within an enclosed building and the project site is located more than 1,200 feet from the nearest residences.

The appellants also expressed concern about increased noise from Star Concrete's trucks that use 7th Street. Per Mr. Pack's supplemental letter, "(a) project truck traffic noise analysis has not been performed as the traffic due to a project must increase the existing ambient traffic volumes by at 15% to increase the traffic noise by 1 dB." The project will not result in an increase in

traffic volumes compared to pre-project conditions, and therefore will not result in an increase in traffic noise (see discussion of traffic impacts, below).

3. *Allegation: The Project Will Have Significant Air Quality Effects.*

The appellants claim that “(m)any of the air quality impacts caused by the Project as identified by the expert analysis of Matthew Hagemann, P.G., C.Hg, were simply ignored.” The appellants also claim that the Subsequent IS/MND failed to consider the human health impacts, and that the failure to respond to claims by the appellants’ air quality expert justify the preparation of an EIR.

The claims made by Mr. Hagemann were previously addressed in the response to Comments A.12 through A.17 in the Supplemental Memo (Attachment 3). These claims were that: (i) the Subsequent IS/MND failed to address construction air quality impacts, (ii) the validity of the Bay Area Air Quality Management District (BAAQMD) thresholds used in the analysis, (iii) the adequacy of proposed mitigation measures address fugitive dust, and (iv) that the Subsequent IS/MND did not consider the air quality impacts to sensitive receptors. Responses to these claims are summarized as follows:

- *Construction Air Quality:* The area of construction disturbance is smaller than the BAAQMD screening level size for construction projects, so construction-period air quality emissions are considered to be less-than-significant. Standard project permit conditions for controlling construction period air quality will apply to the project and are included in the Special Use Permit.
- *Use of 2011 BAAQMD Thresholds:* BAAQMD’s adoption of its 2011 CEQA Air Quality Guidelines setting thresholds for determining project air quality impacts is currently being challenged in court on the limited issue pending before the California Supreme Court of whether CEQA requires analysis of the environment’s impact on a project. The challenge does not concern the validity, merits, or scientific basis of the thresholds. The City used the thresholds in the 2011 BAAQMD CEQA Air Quality Guidelines since they represent the best available science for evaluating air quality impacts under CEQA. The 1999 BAAQMD CEQA Guidelines that the appellants claim the City should use are nearly 15 years old are not the best available information for the City to use in determining the significance of air quality impacts under CEQA.
- *Adequacy of Mitigation Measures:* Mitigation Measure AIR-1 addresses fugitive dust impacts from the concrete recycling operation and associated stockpiles, and incorporates BAAQMD Best Available Control Technology (BACT) and Best Management Practices to reduce fugitive dust emissions to a less than significant level.

- *Air Quality Impacts to Sensitive Receptors:* A Health Risk Assessment (HRA) was not required because the nearest sensitive receptors are located in the Spartan Keyes neighborhood, which is more than 1,000 feet from the project site. Health risks from toxic air contaminants (TACs) were evaluated as part of the BAAQMD permit process and in a supplemental air quality study, discussed below.

Air Pollution Health Risks to Sensitive Receptors

With regards to the consideration of human health impacts from project-generated air pollution, the response to Comment A.17 in the Supplemental Memo (Attachment 3) notes that a human health risk assessment was not required because the project is located more than 1,000 feet from the nearest sensitive receptors as defined by BAAQMD. In their current Air Quality Guidelines dated May 2012, BAAQMD defines “sensitive receptor” as:

“Facilities or land uses that include members of the population that are particularly sensitive to the effects of air pollutants, such as children, the elderly, and people with illnesses. Examples include schools, hospitals and residential areas.”

The appellants claim this definition is not valid because the Subsequent IS/MND cites the 2011 BAAQMD Air Quality Guidelines, which are currently being challenged. However, the definition of sensitive receptor is unchanged with the current BAAQMD CEQA Guidelines dated May 2012, which are the same as the 2011 Guidelines except that the thresholds of significance were removed. Therefore, the definition cited in the Subsequent IS/MND is still valid. Based on BAAQMD’s definition, Spartan Stadium, the nearest non-industrial use to the project, would not be considered a “sensitive receptor.” This is because people that are sensitive to the effects of air pollution (such as children and the elderly) are not expected to spend a significant amount of time there (i.e., sensitive individuals would only be present at Spartan Stadium for short periods of time on an occasional basis).

Evaluation of Human Health Risks

Although a human health risk assessment wasn’t required for the project, potential health risks were evaluated as part of the BAAQMD source permit for the concrete recycling facility and in a letter from the project’s air quality consultant dated January 7, 2014 (attached to the Supplemental Memo in Attachment 3).

As discussed in the Subsequent IS/MND and summarized in a supplemental letter dated July 17, 2014 from James A. Reyff of Illingworth and Rodkin, Inc. (Attachment 8), source permits issued by BAAQMD for the concrete recycling operations evaluated potential Toxic Air Contaminant (TAC) emissions. These evaluations found TAC emission levels were below thresholds where these emissions would be considered hazardous. As summarized in the supplemental letter from Reyff, “(t)he District evaluated TAC emissions from the project under Regulation 2, Rule 5 Toxics New Source Review. The BAAQMD permit evaluation found that no annual emissions

of TACs would be emitted from the project in amounts that would exceed any TAC trigger levels. Therefore, BAAQMD did not perform any toxics risk analysis for the project and issued a permit to operate¹. As a result, the Subsequent IS/MND concluded that the recycling plant would not cause significant health risks due to air pollutant emissions from the recycling plant.” The supplemental letter goes on to say “Lifetime excess cancer risk is considered to be less than significant because the project would not be a substantial source of TAC emissions and BAAQMD permit evaluation found that no annual emissions of TACs would be emitted from the project in amounts that would exceed any TAC trigger levels.”

The review of TAC emissions in the BAAQMD source permit did not evaluate potential impacts due to chronic exposure to crystalline silica. Exposure to Crystalline silica was evaluated separately in Mr. Reyff’s letter of January 7, 2014. With regards to crystalline silica exposure, the analysis in this letter found that “...the maximum concentration (of crystalline silica) at the fence line (along Alma Avenue) would be 20.4 µg/m³ (micrograms per meter). The chronic and acute impacts attributable to crystalline silica would be below the Risk and Hazard thresholds identified by BAAQMD for non-cancerous air contaminants.” At this concentration, the analysis concluded that “...there would be no significant health risks, both chronic and acute to nearby receptors. This would include residences and users of Spartan Stadium and the athletic fields.”

Cumulative Air Quality Impacts

The appellants claim the project did not evaluate the cumulative effects of air pollution from sources in the vicinity of the project. As summarized in his July 17, 2014 supplemental letter, Mr. Reyff re-iterates the conclusion of the Subsequent IS/MND that the project’s contribution to local air pollution is not cumulatively considerable. The Subsequent IS/MND notes that criteria air pollutants emitted by the project are below BAAQMD’s thresholds of significance. Mr. Reyff also addresses the cumulative effect of the project and pollutants from traffic along S. 7th Street, and concluded that the cumulative effect of air pollution on the nearest sensitive receptors (residents of the Spartan-Keyes neighborhood), as expressed in lifetime cancer risk, Hazard Index (HI), and annual PM_{2.5} concentration is still significantly below the thresholds where exposure is deemed hazardous.

Mr. Reyff’s July 17, 2014 letter further supports the conclusions of the Subsequent IS/MND by stating that “(t)he proposed project, by itself, would not result in significant air quality impacts. The project, combined with other sources, would not have air quality impacts that would be considered cumulatively considerable.”

¹ Under BAAQMD Rule 2, Regulation 5, Section 302, the Project Risk Requirement is that the APCO shall deny any Authority to Construct or Permit to Operate for any new or modified source of TACs if the project risk exceeds any of the following project risk limits:

Section 302.1 A cancer risk of 10.0 in one million (10 E-6).

Section 302.2 A chronic hazard index of 1.0.

Section 302.3 An acute hazard index of 1.0.

4. Allegation: The Project Will Have Significant Effects on Aesthetics.

The appellants contend that previously submitted public comments expressing concern about the visual impacts of the material stockpiling on the project site constitute a fair argument for the preparation of an EIR. As discussed in the Subsequent IS/MND, the project is part of a previously approved concrete batch plant operation for which a Negative Declaration was adopted. Therefore the concrete recycling facility (and associated materials stockpiling) is an extension of this original use. The applicable standard for environmental review is set forth in Section 15162(a) of the CEQA Guidelines, and a Subsequent Mitigated Negative Declaration was prepared. As a subsequent Mitigated Negative Declaration, the fair argument standard cited in the appeal letter does not apply.

As discussed in the Aesthetics section of the Subsequent IS/MND, the project site is located within a Heavy Industrial zone district where stockpiling of materials is common. Furthermore, as discussed in the response to Comment A.10 in the Supplemental Memo, limits on stockpile heights, the construction of the 20-foot tall soundwall along Alma Avenue, and the landscaping required along the S. 7th Street frontage will minimize visual impacts of the project when viewed from adjacent streets and Spartan Stadium. With the exception of the stockpile for aggregate (which is limited to a height of 37 feet), stockpiles are limited to 23.5 feet in height, which is the height of Star Concrete's building at the northwest corner of the site. This will reduce visual impacts of the project from Spartan Stadium, the only non-industrial land use in the immediate vicinity of the project site.

5. Allegation: The Project Will Have Significant Traffic Effects.

The appellants claim the traffic analysis for the project is flawed because it uses traffic data that is based on "hypothetical and theoretical circumstances" and not "actual conditions on the ground." Furthermore, the appellants claim that traffic analysis assumptions are flawed, including the number of employees, the counting of trips from the prior use on the northern property as credits toward the current project, and the amount of traffic associated with Star Concrete's operations before the start of concrete recycling activities (the baseline traffic).

Project Compliance with the City's Transportation Level of Service Policy

The City uses Council Policy 5-3, the City's Transportation Level of Service Policy, for determining the significance of a traffic impact under CEQA. Based on this Policy, a project is considered to result in a significant traffic impact if:

- 1) The peak hour level of service at a signalized intersection degrades from an acceptable LOS D or better under background conditions to an unacceptable LOS E or F under project conditions; or

- 2) The peak hour level of service at a signalized intersection is already an unacceptable LOS E or F under background conditions and the addition of project trips causes both the critical-movement delay at the intersection to increase by four (4) or more seconds and the demand-to-capacity ratio (V/C) to increase by 0.01 or more

Hexagon Transportation Consultants (Hexagon) prepared a study of existing intersection level of service (LOS) in its report dated April 14, 2014, included in Appendix H to the Subsequent IS/MND (Attachment 2). This study included manual (on the ground) counts of peak hour traffic at five signalized intersections in the vicinity of the project site, as well as an analysis of recent data from the Santa Clara Valley Transportation District's Congestion Management Plan (CMP), the City's TRAFFIX database, and prior traffic studies in the area. This study also included all traffic passing through the signalized intersections in the vicinity of the project during the morning and evening peak hours, capturing traffic from surrounding land uses (the traffic baseline) plus Star Concrete's operations.

The results of Hexagon's analysis found that none of the signalized intersections in the vicinity of the project site operated at an LOS of E or F. Therefore, the report concluded that "(b)ecause all of the study intersections operate at a level of service of C or D under Current (With Project) Conditions, then, under the City of San Jose's definition, the addition of a concrete recycling facility did not cause a significant adverse traffic impact."

Project Trip Generation

The primary claim by the appellants is that the trip generation numbers used in the Subsequent IS/MND are flawed because the trip generation numbers for the existing batch plant operation (the baseline for project traffic) are inaccurate. Since no traffic studies were included in the 1988 Negative Declaration and no records exist of trips generated by Star Concrete in 2007 (right before the start of the unpermitted concrete recycling operations), any trip generation for Star Concrete's operations prior to the expansion would be an estimate. However, the primary purpose of determining a traffic baseline for Star Concrete's operations prior to the start of concrete recycling operations is to evaluate if the change in trips resulting from the project would trigger a degradation of the level of service at signalized intersections sufficient to constitute a significant impact under the City's Transportation Level of Service Policy. All of the traffic reports prepared for the project by MH Engineering (which evaluated project truck traffic) and Hexagon concluded that with the introduction of concrete recycling operations, traffic generated by Star Concrete's operation would decrease slightly compared with Star Concrete's operation without concrete recycling.

Allen Andrade of MH Engineering, in his study of truck traffic dated December 6, 2012 (Appendix E to the Subsequent IS/MND in Attachment 2 and summarized in a supplemental letter dated July 2, 2014 included as Attachment 5), developed estimates of truck trips generated by Star Concrete's operations with and without concrete recycling based on truck capacity and two concrete production scenarios for the batch plant: a "possible day" with 4,000 tons of concrete/building materials produced per day and an "average day" with 1,600 tons of

concrete/building material produced per day. In both production scenarios, Mr. Andrade concluded that with the introduction of concrete recycling "...the additional trucks bringing in the demolished concrete material are effectively offset by a reduction in the amount of materials being hauled in from commercial suppliers and the elimination of the need to haul-off unused material to a disposal site."

Hexagon prepared their own trip generation analysis for the project in October 2013 (included in Appendix H to the Subsequent IS/MND in Attachment 2). To determine the total number of trips generated by the project with concrete recycling (and the previously proposed third batch plant), this analysis used the truck traffic estimates for an "average day" batch plant operation (i.e. 1,600 tons of concrete production per day) from the December 2012 MH Engineering report, employment numbers from September 2013, and the results of a three day survey of truck traffic associated with the concrete recycling facility in March 2013. This report also concluded that the introduction of concrete recycling would result in a decrease in traffic compared with operations prior to the start of recycling operations, including a decrease in peak hour trips. Thus, the project would not result in a significant impact under the City's Transportation Level of Service Policy.

Finally, Hexagon submitted a revised Traffic Analysis in April 2014 which included revised project trip estimates to reflect the removal of the third batch plant from the project and an intersection level of service analysis. The revised trip estimates used a similar methodology as the trip estimates from the October 2013 Hexagon study, except that the third batch plant was removed from the project and higher production capacities (about 4,000 tons per day) were assumed for the batch plant operations, based on the "possible day" scenarios from the December 2012 MH Engineering study. Like the earlier studies, this trip estimate also found a decrease in project traffic resulting from the start of concrete recycling operations.

All traffic studies prepared for the project show a decrease in Star Concrete's traffic with the introduction of concrete recycling compared to Star's operations without concrete recycling. As discussed in the December 2012 MH Engineering report, this reduction occurs because "...the additional trucks bringing in the demolished concrete material are effectively offset by a reduction in the amount of materials being hauled in from commercial suppliers and the elimination of the need to haul-off unused material to a disposal site." This same finding occurs if the batch plants are assumed to be producing 1,600 tons per day or 4,000 tons per day of concrete ready-mix and building materials.

Trip Credit for Prior Use

Hexagon's traffic reports applied a trip credit for trips generated by the prior use before Star Concrete acquired the northern portion of their current project site in 2007. The appellants claim, based on a letter from John Paul Williams of Williams Research dated June 17, 2014 (attached to the letter from Mr. Burstein dated June 17, 2013 and enclosed with the appeal letter in Attachment 4), that Hexagon's credit of trips from the prior use has no legal justification.

However, the use of these credits has no bearing on the conclusion of the traffic reports that the project will not result in a significant traffic impact.

Hexagon's trip generation estimates in both the October 2013 and revised April 2014 traffic reports, the introduction of concrete recycling results in a reduction in traffic compared to Star's operations without concrete recycling, even without applying trip credits from the prior use. Furthermore, the intersection level of service analysis in Hexagon's April 2014 report found that the project does not conflict with the City's Transportation Level of Service Policy, and therefore does not result in a significant environmental impact.

Traffic from Previously Approved Batch Plant Operations

The appeal letter ends by stating that traffic baseline (trips generated by Star Concrete prior to the start of concrete recycling operations) should be significantly lower than that assumed in the Subsequent IS/MND and supporting traffic studies. The appellants rely on a letter from Mr. Williams, dated June 17, 2014 (included with the appeal letter in Attachment 4), as a basis for assuming batch plant production at 1,000 tons per day, resulting in a traffic baseline of about 230 car and truck trips per day. This batch plant production capacity is based on a BAAQMD inspection of Star's batch plant operations from 1997, and does not account for other approved activities occurring on site such as the retail sales of materials (which is part of the project description in the original Negative Declaration and is therefore part of the project baseline).

Using batch plant production amounts from a 1997 inspection is not a valid baseline for evaluating Star Concrete's traffic prior to the start of concrete recycling operations in 2007, as production varies depending on factors such as time of year and regional construction activity. The truck trip estimates from the 2012 MH Engineering report are based on an analysis of operations reported by the owner, and observed by the consulting engineer. The project's original permit (CP88-003) and Negative Declaration placed no limits on traffic for the batch plant operations, and furthermore, no expansion of the batch plant operations is proposed with the current project.

The traffic analyses focused on the effect the introduction of concrete recycling has on total project traffic. As stated in the Subsequent IS/MND and in the trip generation reports, concrete recycling will result in a slight decrease in trips generated by Star Concrete's operations if the batch plants are producing 1,600 or about 4,000 tons per day of material (and presumably 1,000 tons per day of material). So regardless of the amount of concrete production at the batch plants, the project would result in a decrease in traffic compared to operations without concrete recycling.

Cumulative Traffic

The appellants claim that cumulative traffic impacts were not considered in the Subsequent IS/MND. Cumulative traffic impacts were addressed in the Trip Analysis prepared by Hexagon Transportation Consultants, Inc. on April 14, 2014 (Appendix H to the Subsequent IS/MND).

This analysis acts as a cumulative traffic impact analysis since it counts all traffic passing through nearby signalized intersections, including Star Concrete, adjacent industrial uses, residents of nearby neighborhoods, and others. The analysis also included data from the Santa Clara Valley Transportation District's CMP, the City's TRAFFIX database, and traffic studies for projects that have been approved but not yet built.

The primary determinant if a project will have a significant traffic impact is if the project results in additional peak hour traffic that violates the City's Transportation Level of Service Policy (Council Policy 5-3). Based on the intersection level of service analysis in the April 2014 Hexagon study, none of the signalized intersections in the vicinity operate at an LOS of "E" or "F." Because this analysis was based on current traffic conditions that included Star Concrete's operations with the (unpermitted) concrete recycling operations, and all previous trip generation estimates prepared for the project concluded that the introduction of concrete recycling would result in a reduction in trips, Hexagon concluded that the project would not result in a significant traffic impact.

Furthermore, the appellants never claim that the project will result in an impact to a signalized intersection level of service. The appellants do claim that the increase in trips from the baseline claimed by Williams (230 trips) and the total trips in the Subsequent IS/MND (1,091 trips) represent "substantial evidence of a significant environmental impact." However, as discussed above, under the City's adopted thresholds of significance, the City does not consider increases in traffic to be a significant impact unless the increase violates the City's Transportation Level of Service Policy, which is not the case with this project.

6. Allegation: An EIR must be prepared because substantial evidence supports a "fair argument" that the project may have significant environmental impacts.

Finally, based on the claims above, the appellants contend that an EIR must be prepared for the project on the basis of CEQA Guidelines Section 15064(a)(1) and 15064(f)(1), since comments demonstrate that a fair argument exists and that the project may have significant environmental impacts. However, a previous Negative Declaration was adopted in 1988 for the batch plant operations and sale of building materials on the southern portion of the project site. This Negative Declaration accounted for environmental impacts such as traffic, air quality, noise, and hazardous materials related to the batch plant operations and retail sale of building materials.

As discussed in the response to the appellant's claims above, in the Supplemental Memo, and the Subsequent IS/MND, the introduction of concrete recycling and a CNG fuel station do not represent substantial changes to the circumstances of the 1988. The project does not require major revisions to the prior Negative Declaration due to new significant environmental effects or demonstrate a substantial increase in the severity of a previously identified significant effect. There is no new information involving significant effects since the prior Negative Declaration. Therefore, an EIR is not required pursuant to CEQA Guideline section 15162(a).

General Plan Conformance

The subject site has an Envision San Jose 2040 General Plan Land Use/Transportation Diagram designation of Heavy Industrial, a designation intended “for industrial users with nuisance or hazardous characteristics which for reasons of health, safety, environmental effects, or welfare are best segregated from other uses.” Concrete recycling operations and CNG fueling facilities are consistent with the intent of this designation.

Zoning Conformance

The subject site is zoned HI – Heavy Industrial. Recycling Processing Facilities, including concrete recycling, require a Special Use Permit in the HI zone district. The manufacture of concrete products is a heavy industrial use and is permitted in the HI Heavy Industrial Zoning District. Other components of the project, including materials stockpiling and the CNG fueling facility, are ancillary to the primary concrete production and recycling operations on the site, and therefore are allowed in the HI zone district.

Industrial uses that generate noise levels in excess of 70 decibels at the property line adjacent to a property used or zoned for commercial or residential purposes require a Special Use Permit in the HI Heavy Industrial Zoning District. The Special Use Permit allows noise levels from the concrete crushing operations of up to 71 decibels at the northern property line, and includes the requirement for a 20 foot tall noise barrier as a mitigation measure.

EVALUATION AND FOLLOW-UP

If the Council adopts the Subsequent Mitigated Negative Declaration, then Star Concrete will proceed with the acquisition of the necessary building permits for the legalization of the concrete recycling operation and for the installation of the CNG fueling facility.

POLICY ALTERNATIVES

As discussed in the Analysis section, the Council has one distinct decision to make:

1. Mitigated Negative Declaration: The Council can either:
 - a. Adopt the Subsequent MND and related Mitigation Monitoring and Reporting Program (MMRP), or
 - b. Require that an Environmental Impact Report be prepared.

For the reasons stated in the Analysis section, staff recommends that the City Council adopt the Subsequent MND and related MMRP and make the required findings under CEQA as set forth in the draft City Council resolution.

PUBLIC OUTREACH/INTEREST

- ☐ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30, the Public Outreach Policy. The property owners and occupants within a 1,000-foot radius of the project site were sent public hearing notices for the City Council appeal hearing, and for the previous Planning Director's hearing and community meeting. Copies of the Initial Study (IS), Mitigated Negative Declaration (MND), comments received during circulation of the IS/MND, and the Draft Planned Development Permit were available on the Planning Division web site prior to the first public hearing in June and remain available on the web site. This memo and attachments have been posted on the City's web site.

Community Meeting

On November 18, 2013, staff from the Planning Division facilitated a City-noticed community meeting attended by approximately 60 members of the public. In addition to Planning staff, representatives from the applicant team and staff from the Departments of Transportation and Public Works were in attendance to provide background information on the project, discuss the permit, environmental review processes, and answer the community's questions. The primary concerns raised by the community were related to fugitive dust, toxic air contaminants (predominately silica from concrete crushing and transport), degraded aesthetics due to on-site stockpiling, and truck traffic between the project site and I-280 through the Spartan-Keyes neighborhood. Most attendees were concerned about truck traffic along 7th Street and the related noise, safety, air pollution, and vibration impacts to Spartan-Keyes residents.

Staff has met with and discussed the project, including application and environmental review processing procedures, with several interested members of the public. Staff has received and responded to numerous emails and phone calls, mostly from neighbors opposed to the project due to concerns about truck traffic through the Spartan-Keyes neighborhood.

COORDINATION

The preparation of this memorandum was coordinated with the City Attorney's Office and the Department of Public Works.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable Zoning and General Plan goals and policies as discussed in the Analysis section.

CEQA

Subsequent Mitigated Negative Declaration, resolution to be adopted.

CONCLUSION

The Star Concrete Expansion Subsequent Mitigated Negative Declaration meets the requirements of CEQA by disclosing the environmental effects of the project and by providing feasible mitigation measures to mitigate potentially significant impacts from the project to a less than significant level. Because the appeal does not raise new environmental issues, nor indicate that environmental impacts are more severe than previously disclosed, there is no need to propose additional mitigation measures to mitigate significant environmental effects. As the project does not include substantial changes to a previously adopted Negative Declaration, the project has no new significant environmental effects or a substantial increase in the severity of any previously identified significant effect, and there is no new information involving significant effects since the prior Negative Declaration, an Environmental Impact Report (EIR) is not required pursuant to CEQA Guideline section 15162(a). Staff recommends that the City Council uphold the adoption of the Subsequent MND and Mitigation Monitoring and Reporting Program.

/s/

HARRY FREITAS, DIRECTOR
Planning, Building and Code Enforcement

For questions, please contact David Keyon at (408) 535-7898.

Attachments:

1. Final Director's Determination, June 18, 2014.
2. Revised Draft Initial Study and Subsequent Mitigated Negative Declaration (Subsequent IS/MND) dated June 6, 2014.
3. Supplemental Memorandum to the Planning Director with staff responses to comments on the draft Initial Study and Mitigated Negative Declaration, dated June 6, 2014.
4. Environmental Appeal from Michael D. Burstein of Weinberg, Roger, and Rosenfeld, dated June 23, 2014
5. Supplemental letter on truck traffic from Allen Andrade of MH Engineering Co., dated July 2, 2014.
6. Supplemental letter on noise from Jeffrey K. Pack of Edward L. Pack Associates, Inc., dated July 7, 2014.
7. Letter on GNG dryer specifications from William J. Kelly, Jr., Esq., dated July 10, 2014.
8. Supplemental letter on air pollution from James A. Reyff of Illington & Rodkin, Inc., dated July 17, 2014.
9. Planned Development Permit approved by the Director of Planning on June 18, 2014.
10. Mitigation Monitoring and Reporting Program adopted at the June 18, 2014 Director's Hearing.